

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**VICTOR A. JOE,**

**Plaintiff,**

**vs.**

**No. CIV 04-0144 RB/ACT**

**INNOVATIVE HEALTH AT HOME, INC.,**

**Defendants.**

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** came before the Court on Defendant's Motion to Quash Service of Process and Motion to Dismiss for Failure to Abide by Court's Order (Doc. 7), filed on February 1, 2005. Jurisdiction arises under 28 U.S.C. §1331. Having reviewed the submissions of the parties and the relevant law, I find that this motion should be denied.

Plaintiff (Joe) filed this case pro se on February 10, 2004, asserting federal civil rights claims against Innovative Health at Home, Inc. In the body of his complaint, Joe names Richard Zamora, "Executive Director" as a Defendant. On February 20, 2004, the Honorable Alan C. Torgerson, United States Magistrate Judge, granted Joe's application to proceed in forma pauperis pursuant to 28 U.S.C. §1915 and ordered the United States Marshal to serve the summons and complaint personally on Defendants.

On October 6, 2004, Judge Torgerson required Joe to show cause why the complaint had not been served on Defendants as required by FED. R. CIV. P. 4. Joe timely responded to the order to show cause and asserted that he was indigent. On October 22, 2004, Judge Torgerson extended the time for Joe to effect service by 45 days. On December 7, 2004, the Clerk issued a summons as to Richard Zamora, and forwarded it to the United States Marshal for service. No returns of service

have been filed.

In cases where a litigant has been granted in forma pauperis status, the officers of the court are required to issue and serve all process. 28 U.S.C. § 1915(d). Personal service of the summons and complaint must be effected by the Clerk of the Court and the United States Marshal. Because the officers of the court, and not Joe, are responsible for service of process, the motion to dismiss should be denied.

**WHEREFORE,**

**IT IS ORDERED** that Defendant's Motion to Quash Service of Process and Motion to Dismiss for Failure to Abide by Court's Order (Doc. 7), filed on February 1, 2005, is **DENIED**.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall issue summons as to Defendant Innovative Health at Home, Inc. and as to Defendant Richard Zamora.

**IT IS FURTHER ORDERED** that the United States Marshal shall personally serve the summons and complaint on Defendant Innovative Health at Home, Inc. and on Defendant Richard Zamora. The service of the summons and complaint shall be at no cost to Joe.



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**ROBERT C. BRACK**  
**UNITED STATES DISTRICT JUDGE**